

Michael J. Holmes
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Plaintiff Pro Se Litigant

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WESTERN DISTRICT OF TEXAS
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SA21CA0540 JKP

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF TEXAS

SAN ANTONIO DIVISION

Michael J. Holmes

Civil Docket No.

Plaintiff(s),

Verified Complaint

vs.

Complaint For:

Henry J. Bemporad

Violation of the

Defendants

Plaintiffs 14th Amendment

Rights

Introduction

This suit is being filed under Title 42 United States Code Standard 1983 ("Section 1983") alleging violations of the Plaintiffs Fourteenth Amendment equal protection rights . This lawsuit request for injunctive relief and declaratory relief.

The Defendant has violated the Plaintiffs Fourteenth Amendment, equal protection rights, during a pending lawsuit which has caused a controversy. The Plaintiff will prove the Defendant acted "Ultra-Vires " beyond the Defendants legal jurisdiction. The defendant actions are controversial, with one pending controversial lawsuit connected to four pending lawsuits that each have different controversial claims.

Denial of the Plaintiffs constitutional and civil rights are not a judicial function and conflicts with any definition of a judicial function.

This complaint will include case references and cases where judges were held accountable when their knowing and willing action fell outside the boundaries of their job description. That failure to follow simple guidelines of their position makes a judges actions no longer a judicial act but an individual act as the act represents their own prejudices and goals .

Case law states that when a judge acts as a trespasser of the law, when a judge does not follow the law, they lose subject matter jurisdiction and the judge's orders are void , of no legal force or affect.

Monetary Damages can be recovered from a judge if the Plaintiff can prove that the judge acted beyond his or her legal jurisdiction. The Plaintiff will prove the Defendant acted "Ultra-Vires" beyond the Defendants legal jurisdiction. It is in fact possible to obtain relief in equity against a judge.

Jurisdictional Basis

I. Plaintiff claims federal jurisdiction pursuant to Article III which extends the jurisdiction to cases arising under the U.S. Constitution.

II. Plaintiff brings this suit against the Defendant, pursuant to title **42 U.S. Code 1983** for violations of protections, guaranteed to him by fourteenth amendment of the federal constitution.

III. Plaintiff Michael J Holmes is a natural person residing at 1431 Delgado Street, San Antonio TX 78207

IV. Defendant is Henry J. Bemporad. 655 E. Cesar E. Chavez Blvd., San Antonio, TX 78206

Email: crystal_sosatxwd.usccourts.gov

The Plaintiff alleges the defendant, acting under color of state law, deprived plaintiff of a right guaranteed under the United States Constitution or a federal statute. The Plaintiff will prove the Defendant acted "Ultra-Vires" beyond the Defendants legal jurisdiction.

Statement of Case

Title 42 U.S. Code 1983 Every person who, under color of any statute, ordinance, regulation custom or usage of any state or territory subjects, or causes subjected to , any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law and suit in equity.

Due to the negligent act of the Defendant, the controversy between the Plaintiff and Defendant has intensified and will continue to intensify which will cause irreparable harm and a inadequacy of damages to the Plaintiff. The Plaintiff can prove the Defendant acted "Ultra-Vires " beyond the Defendants legal jurisdiction.

The controversy surrounding the Defendants actions include:

1) Falsification of a Government Document. Chapter 73 of Title 18 of the United States Code under Sarbanes -Oxley Act-Anyone who knowingly falsifies documents to "Impede, obstruct, or influence " an investigation shall be fined or face a prison sentence of up to 20 years (www.county.org, www.waltsanchez.com/blog). Falsifying documents is the act of intentionally changing or modifying information on a document with the intention of misleading a person or company. Falsifying documents is a criminal offense that involves the altering, changing, modifying , passing or possessing of a document for an unlawful purpose.

It is considered a white collar crime and it can be included as part of other collateral crimes (Legal match-Law Library-Article). In Texas , it is illegal to use false information to alter, create , or sign a document for the purpose of harming or defrauding a person (Forgery-Tampering with a Government Record). You may be arrested for falsifying documents if you engage in any of

the following Activities a) Altering or misrepresenting factual information and or destroying information material to an investigation (TACA Annual Conference Falsification of a Government Document).

2) Penal Code 37.10 Tampering with a Government Record is knowingly making a false entry in a government document/record. When a person Intentionally destroys, conceals, removes, or otherwise impairs the verity of a government record. "ORR". Makes presents, or uses any record, document, or thing with knowledge of its falsity and with intent that it be taken as a genuine government record (www.codes.findlaw.com).

3) Fraud is any illegal act characterized by deceit, concealment, or violation of trust.

4) Forgery is creating or altering a document with the intent to defraud someone. Altering document without the permission, such as changing the date or time on a document (www.texasdefensefirm.com)

5) 49 CFR 1570.5- Fraud and intentional falsification of records. No Person may make cause to be made, attempt , or cause to attempt any of the following: (a) Any fraudulent or intentionally false statement in any record or report that is kept, made, or used to show compliance with the subchapter, or exercise any privileges under this chapter. (b) Any reproduction or alteration, for fraudulent purpose, of any record, report, security program , access medium, or identification medium issued under this subchapter or pursuant to standards in the subchapter (www.law.cornell.edu).

6) Title 8 Chapter 37 Sec. 37.03 Aggravated Perjury. The person commits perjury if the false statement is made in connection with an official proceeding. This offense, under this section is a felony of the third degree(Acts 1973, 63rd Leg., p. 883, ch. 399, sec. 1, eff. Jan.1, 1974.

Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994)(www.statutes.capitol.texas.gov).

7) Public Corruption is a white collar crime- Public Corruption involves a breach of public trust and/ or abuse of position by federal, state, or local officials and their private sector accomplices. By broad definition of a government official, whether elected, appointed or hired may violate federal law when he/she asks, demands, solicits, accepts, or agrees to receive anything of value in return for being influenced in the performance of their official duties (www.law.cornell.edu).

First Controversial issue

The Defendant stated "Section 1915 (e) provides that, in IFP cases, the court shall dismiss the case at anytime " if the court determines, among other things that the action "fails to state a claim on which relief may be granted," or " seeks monetary relief against a defendant who is immune from such relief",

The Plaintiff listed eight controversial claims/issues between Richard B. Farrer and the Plaintiff. The Controversy is, Richard B. Farrer is denying the Plaintiff of the Plaintiffs 14th Amendment Rights.

Richard B Farrer intentionally changed and modified Federal guidelines. Richard B Farrer knowingly made a false entry regarding the Plaintiffs complaint. Richard B Farrer violated the Plaintiffs trust by engaging in actions of deceit and concealment of the facts presented in the Plaintiffs complaint. Richard B Farrer made a fraudulent and intentional false statement in (any record that is kept). Richard B Farrer

action are a breach of public trust and abuse of Richard B Farrer position. Richard B Farrer made a false statement in connection to an official proceeding.

Falsification of a Government Document. Chapter 73 of Title 18 of the United States Code under Sarbanes -Oxley Act. Falsifying documents is the act of intentionally changing or modifying information on a document with the intention of misleading a person or company.

Penal Code 37.10 Tampering with a Government Record is knowingly making a false entry in a government document/record

Fraud is any illegal act characterized by deceit, concealment, or violation of trust.

49 CFR 1570.5- Fraud and intentional falsification of records. No Person may make cause to be made, attempt , or cause to attempt any of the following: (a) Any fraudulent and or intentionally false statement in any record or report that is kept

Public Corruption is a white collar crime- Public Corruption involves a breach of public trust and/ or abuse of position by federal, state, or local officials and their private sector accomplices

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The Plaintiff alleges that Richard B Farrer , acted under color of state law, deprived plaintiff of a right guaranteed under the United States Constitution or a federal statute.

The Controversy is:

The Defendant intentionally changed and modified the statement on the Plaintiffs complaint to indicate reflect on the Defendants "Report and Recommendation of United States Magistrate Judge" that the Plaintiff did not provide a claim for which injunctive relief and Declaratory relief can be granted.

The Defendant changed and modified the information in the Plaintiffs complaint with the intention of misleading the federal court. The Defendant knowingly made a false entry regarding the Plaintiffs complaint. The Defendant violated the Plaintiffs trust by engaging in actions of deceit and concealment of the facts presented in the Plaintiffs complaint. The Defendant made a fraudulent and intentional false statement in (any record that is kept). The Defendants action are a breach of public trust and abuse the Defendants position. The Defendant made a false statement in connection to an official proceeding.

Falsification of a Government Document. Chapter 73 of Title 18 of the United States Code under Sarbanes -Oxley Act. Falsifying documents is the act of intentionally changing or modifying information on a document with the intention of misleading a person or company.

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Second Controversial issue

The Defendant states "the Plaintiffs case must be dismissed because 1983 applies only to persons acting under the color of law"; Judge Farrer acts under federal authority. The Plaintiff can prove the Defendant acted "Ultra-Vires " beyond the Defendants legal jurisdiction.

Prayer for Relief

Wherefore Plaintiff prays this court issues equitable relief as follows:

1. The court issue injunctive relief ordering the Defendant to not be assigned to any cases filed by the Plaintiff.
2. The court issue injunctive relief ordering the defendant to recuse and/or be removed from the Civil Case # SA-21-CA-498-FB (HJB)

3. The court issue a injunctive relief ordering the court to reverse the dismissal of Civil Case # SA-21-CA-498-FB (HJB)

6. The court issue a injunctive relief ordering the defendant to not violate the Plaintiffs 14th Amendment rights (if the Defendant cannot be recused and or removed from the three lawsuits and denied the ability to be the judge in any new lawsuit filed by the Plaintiff)..

8. The court issue injunctive relief ordering the defendant to follow the Due Process guidelines.

Memphis Light, Gas and Water Division v Craft, 436 U.S. 1,2 (1978) (citations omitted). "The root requirement of the Due Process Clause is that an individual be given an opportunity for a hearing before being deprived of any significant protected interest" (if the Defendant cannot be recused and or removed from the three lawsuits and denied the ability to be the judge in any new lawsuit filed by the Plaintiff)..

The Plaintiff request a declaratory relief detailing the rights and obligations of the Defendant before , during and after a trial. The Defendants rights and obligation will not violate the Plaintiffs 14th amendment rights.

Declaratory relief against the Defendant is unavailable.

Rule 57. Declaratory Judgment 28 U.S.C. 2201 Rule 38 and 39 govern demand for a jury trial. The existence of another adequate remedy does not preclude a declaratory relief that is otherwise appropriate. A declaratory relief is appropriate when it will terminate the controversy giving rise

to the proceeding. In as much as it involves only an issue of law on undisputed or relatively undisputed facts it operates frequently as a summary proceeding justifying docketing the case for early hearing as on a motion as provided for in California (Code Civ. Proc. (Deering, 1937)1062a), Michigan (3 Comp. Laws(1929)13904), and Kentucky (Codes (Caroll, 1932) Civ.Pract.639a-3).

The controversy must necessarily be of a justifiable nature, thus excluding an advisory decree upon a hypothetical state of facts,." *Ashwander v. Tennessee Valley Authority*, 297 U.S. 288, 325, 56 S. Ct. 466, 473, 80 L.E.d. 688, 699 (1936). Existence or non existence of any right, power , duty, liability , disability, or immunity or of any facts upon which such legal relations depend, or of a status may be declared. The Plaintiff must have a practical interest in the declaration sought. A declaration may not be rendered if a special statutory proceeding has been provided for the adjudication of some special type of case . When declaratory relief will not be effective in settling the controversy the court may decline to grant it, but the fact that another remedy would be equally effective affords no ground for declining declaratory relief.

The declaratory relief will state with precision the declaratory judgment desired. The court may sua sponte, if it serves a useful purpose, grant instead a declaration of rights. *Hasselbring v Koepke*, 263 Mich. 466, 248 N.W. 869, 93 A.L.R. 1170 (1933). Written instruments, including ordinances and statutes , may be construed before or after breach at the petition of a properly interested party. The Uniform Declaratory Judgment act affords a guide to the scope and function of the Federal Act. Compare *Aetna Life Insurance Co. v Haworth*, 30 U.S. 227, 57S.Ct. 461 (1937); *Nashville Chattanooga & St. Louis Ryv. Wallace*, 288 U.S. 249 (1933); *Gully, tax*

collector interstate Natural Gas Co. 82 F. (2d) 145 (C.C.A.5th 1936). Ohio Casualty ins. Co. v Plummer, 13 F.Supp169 (S.D.Tex., 1935); Borchard, Declaratory Judgments (1934), *passim*. (Cornell Law School www.law.cornell.edu)

Rule 57 of the Federal Rules of Civil Procedure and Title 28, Section 2201 of the U.S. Code govern declaratory judgments in federal court (Trellis.law).

Enforceability

a declaratory judgment does not provide for any enforcement however , in other words it states the courts authoritative opinion regarding the exact nature of the legal matter.

A declaratory relief claim is normally used to obtain a judicial declaration on the rights and duties of the Plaintiff and the Defendant. (City of Tiburon v. Northwestern Pac. R.R. Co., 4 Cal. App. 3d 160, 170 (1970). Declaratory Relief is not a tool to redress past wrongs, it operates to settle controversies , before they escalate to a repudiation of obligation, invasion of rights , or the commission of wrongs (Travers v. Louden, 254 Cal. App.2d 926, 931 (1967). (Trellis.law).

Declaratory relief has two elements 1) a proper subject of declaratory relief, and 2) an actual controversy involving justifiable questions relating to the Plaintiffs or Defendants rights or obligations. (Jolley v. Chase Home Finance LLC 213 Cal, App 4th872, 909 (2013).) Declaratory judgments preserves a parties legal right (Osseous Technologies of America, Inc. v. Discovery Ortho PRTNERS llc, 191cAL. aPP. 4TH357, 364-365.)

Declaratory relief is appropriate when obtaining a declaration that a statute or regulation is facially unconstitutional (When the Defendant did not make a ruling on the Plaintiffs submitted petitions and put in on the minute sheet).

Benefits of seeking a Declaratory Relief

Code of Civil Procedure 1062.3 Provides for trial setting preference over all other civil actions with certain exceptions

The Parties can resolve disputes before actual damage occurs or irreversible damage is caused by the repudiation of an agreement.

The application , intervention, validity, or constitutionality of a statue, ordinance or regulation may be clarified or resolved.

There is no statute of limitations specifically applicable for declaratory relief actions

Certain disputes that would normally be determined in several actions may be determined in one action, e.g. questions of indemnification;

Under CCP 1062 a declaratory judgment under the California Declaratory Judgment Act does not preclude a party from obtaining other appropriate relief(Simsasgovlaw.com).

An injunction is a court order requiring a person to do or cease doing a specific action. They can be issued by the Judge early in a lawsuit to stop the Defendant from continuing his or her allegedly harmful actions and failure to comply with an injunction can result in the Defendant

being held in contempt of court, which in turn may result in either criminal or civil liability. See, e.g., *Roe v. Wade* 410US 113 (1973).

Case Study

1) In 2015-2016, City of El Paso's Internal Audit Office assisted TX in reviewing the expenditures on the selective Traffic Enforcement Program award to the City Of EL Paso. After a detailed audit, 24 El Paso Police officers were identified that might have violated the STEP Grant Guidelines. 24 officer were referred to El Paso County District Attorney's Office. 17 Officers were indicted by the District Attorney's Office. The 17 officers were charge with "Falsifying a Government Document" for listing false information on the Daily Log Sheets used to report their overtime. The items identified as falsified including the following a) Hours worked, b) units used, c) location d) Old Ticket, e) Equipment used. The EPPD lost 17 highly trained Police Officers. The City of EL Paso received \$38,677.25 in restitution, and numerous daily newspaper articles were written and TV shows were done on the incident(TACA Annual Conference Falsification of a Government Document).

References:

1. **Omar v. Sea-Land Serv., Inc., 813 F.2d 986, 991 (9th Cir. 1987); and Abagninini v. AMAVAC Chem. Corp., 545 F.3d 733,742-43 (9th Cir.2008)** which states the court's authority

includes sua sponte dismissal of claims against defendants who have not been served and defendants who have not yet answered or appeared.

The Plaintiff was unable to find the Defendants home address. The Defendant serve the Defendant via mail at (1) 350 West 1st Street, Court room 6A, 6th floor, Los Angeles, California, 90012-4565 (2) Clerk Of Court 255 E. Temple Street, Suite TS-134, Los Angeles, CA 90012-3332.

The Plaintiff prays the case is not dismissed if the Defendant fails to respond. The Plaintiff will have documents that show the day and time the documents were served to all locations.

2. Zuman v Carnes, 491 F.3d 990, 996 (9th Cir.2007) (internal quotation marks and citation omitted). When considering whether a complaint states a claim, a court must accept as true all of the material factual allegations in it . Hamilton v. Brown, 630 F.3d 889, 892-93 (9th Cir. 2011). The court, however, does not have to accept as true allegations that are unwarranted deductions of facts, or unreasonable inferences. In re Gilead Scis.Sec.Litig., 536 F.3d 1049, 1055 (9th Cir. 2008) states although a complaint does not need to include factual allegations, it must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." Cook v. Brewer, 637 F.3d 1002, 1004 (9th Cir. 2011) (quoting reference Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)). A claim is deemed facially plausible when it "allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." This claim provides sufficient information of underlying facts to give fair notice and to enable the Defendant to defend effectively (Starr v. Baca, 652 F.3d 1202, 1216 ((9th Cir.2011))).

The Plaintiff has provided the Defendant the facts on every controversial claim.

3.Lopez vs Smith 203.f3d 1122, 1126-30 (9th Cir.2000). In the result where the court finds the complaint should be dismissed for failure to state a claim, the court has discretion to dismiss with or without leave to amend. Leave to amend should be granted if it appears possible the defects in the complaint could be corrected , especially if the plaintiff is pro se. ID. at 1130-31; see also Cato v. United States, 70 F3d 1103, 1106 (9th Cir.1995).

The Plaintiff prays, that if there is something that is not correct in this complaint, that the court will allow the Plaintiff to amend it. The Plaintiff is working hard trying to make this process go smoothly for the court. Please give the Plaintiff the opportunity to amend anything that is not correct. "Woods v. Carey, 525 F.3d 886,889-90 (9th Cir.2008) (citation omitted).

4.Kentucky v. Graham, 473 U.S. 159, 169-70 (1985) ; Edelman v. Jordan, 415 U.S. 651 (1974); Ex Parte Young, 209 U.S. 123 (1908). State officials sued in their official capacity, the Eleventh Amendment immunizes state officials sued in their official capacity from claims for retrospective relief (including monetary damage claims) but does not immunize them from claims for prospective relief (such as forward-looking injunctive relief).

5. 42 U.S.C. 1983; see West v. Atkins, 487 U.S. 42, 48 (1988). In order for a Plaintiff to make a claim for a civil rights violation under section 1983, the Plaintiff must allege that a particular defendant, acting under color of state law, deprived plaintiff of a right guaranteed under the United States Constitution or a federal statute.

6.Swarthout v. Cooke, 562 U.S. 216,219 (2011). The analysis of due process "proceeds in two ways: We first ask whether there exists a liberty or property interest of which a person has been deprived , and if so we ask whether the procedures followed by the estate were constitutionally sufficient."

7. City of Cleburne, Tex. v. Cleburne Living Ctr., 473 U.S. 432, 439 (1985). "The Equal Protection Clause of the fourteenth Amendment commands that no state shall 'deny to any person within its jurisdiction the equal protection of the laws,' which is essentially a direction that all persons similarly situated should be treated alike (quoting Plyler v. Doe, 457 U.S. 202, 216 (1982)).

Following the Due Process guidelines is a law the Defendant did not follow for the Plaintiff.

8.FED.R.CIV.P.8(a),(d) (a complaint must contain a "short and plain statement of the claim showing the pleader is entitled to relief," and " each allegation must be simple, concise, and direct").

Short statement- The Defendant has caused a controversy by violating the Plaintiffs Fourteenth Amendment, equal protection rights, during a pending lawsuit. The Plaintiff will prove the Defendant acted "Ultra-Vires " beyond the Defendants legal jurisdiction. The defendant/s actions are controversial, with one pending lawsuit with a controversial claim connected to four pending lawsuit that each have different controversial claims.

Requested Relief- Injunctive Relief, Declaratory Relief

9.Broadman v. Commission on Judicial Performance (1998) 18 Cal.4th 1079, 1090 [77 Cal.Rptr.2d 408, 959P.2d 715] (Broadman)." Evidence of a charge is clear, and convincing so long as there is a 'high probability' that the charge is true."

Reference: Judges Held Accountable

1) **Judge Kelly A. MacEachern**

Orange County Superior Court since 2003

Charged with making false and misleading statements

Commission on Judicial Performance ordered that the judge be removed from her judicial office and disqualified from acting as a judge.

2) Judge James M. Brooks

Orange County Municipal Court since 1986

(Haluck v. Ricoh Electronics, Inc. (2007) 151 Cal.App.4th 994.)

Misconduct committed while presiding over the trial:

a) "Overruled" signs

b) The Twilight Zone

The judge gave free rein to the defendant lawyer to deride and make side remarks at will, at the expense of the Plaintiff, which violates canon 3b(3).

c) Comments During the reading of Stevenson Deposition

Commission on Judicial Performance ordered public admonishment

3) Judge Moruza

Alameda County Superior Court

Misconduct committed while presiding over the trial:

a) Comments in People v. Rupple

Commission on Judicial Performance ordered public admonishment

4) Judge Coats

San Diego County Superior Court

Misconduct committed:

1 Judge Coats ' Prior Discipline and Guidance

2) Judge Coats' Abuse of the Prestige of Judicial Office and Misuse of Court Resources

Commission on Judicial Performance ordered public admonishment

5) Judge O 'Flaherty

Placer County

Misconduct Committed in case: Herold v. Golden 1 Credit Union (Super. Ct. Placer County, No.

RSC13621)

Commission on Judicial Performance ordered public censure

1)Finding concerning the hearing before Judge O'Flaherty

2)Finding Concerning Evidence of Threats or Intimidation

3) Finding concerning Issuance of an order

4) Findings Concerning Embroilment and Due Process Violation

5) Prior Discipline

6) Willful misconduct: Un judicial conduct that is committed in bad faith by a acting judge in their judicial capacity.(Broadman, supra, 18 Cal.4th at p. 1091.)

7) Failure to comply with the California Code of Judicial Ethics canons of judicial ethics is generally considered to constitute un judicial conduct. (Adams v. Commission of Judicial Performance(Adams)(1994) 8 Cal.4th 630, 662 [34 Cal.Rptr.2d 641, 882 P.2d 358].) The judge violated canons 1(a judge shall uphold the integrity of the judiciary), 2A (a judge shall respect and comply with the law), 3B(2) (a judge shall be faithful to the law and 3B(7) (a judge shall accord every person who has a legal interest in the preceding the right to be heard.

8) Judge acts in bad faith (1)performing judicial acts knowing that that act is beyond the judges lawful judicial power

Respectfully Submitted



Michael Holmes

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San Antonio, TX 78207

(626) 373-4331

Statement of Verification

I have read the above complaint and it is correct to the best of my knowledge.



Michael Holmes

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San Antonio, TX 78207

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